

ORIGINAL

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK X

FILED  
U.S. DISTRICT COURT  
NOV 19 2019

CHEN, J.  
KUO, M.J.

ANDRE CALIX,  
Plaintiff

BROOKLYN OFFICE

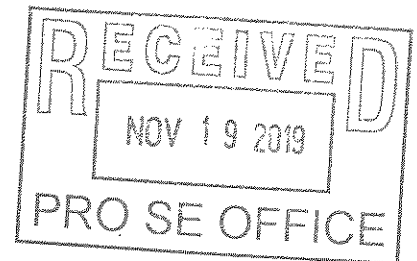
Civil Action No.

**CV19-6685**

v.

UNITED STATES OF AMERICA,  
Defendant

-----X



NEGLIGENCE CLAIM PURSUANT TO FEDERAL TORT  
CLAIM ACT

1. Plaintiff ANDRE CALIX, acting pro se, brings this action pursuant to the Federal Tort Claim Act 28 U.S.C. §§ 2671-2680 against the UNITED STATES OF AMERICA.

2. As a result of the carelessness, inattention and/or laziness of Federal Bureau of Prisons employees, on or about May 22, 2018 Plaintiff, while imprisoned and housed in the I-61 unit at Metropolitan Detention Center in Brooklyn, New York, was assaulted by an inmate unknown

to Plaintiff and hospitalized in the Intensive Care Burn Unit at Staten Island University Hospital where he remained for two weeks due to deep 2nd degree burns he sustained covering 20 plus percent of his body at the very least.

3. Prior to being housed in a two-man cell with Plaintiff Plaintiff's attacker assaulted another inmate at the Federal Bureau of Prisons' mental health hospital at Fort Devins federal medical facility where he was involuntarily committed to undergo psychological examination. In accordance with DOJ regulations and as a result of a full response protocol for a PREA or Prison Rape Elimination Act investigation Plaintiff's attacker was administratively detained in the Special Housing Unit (SHU) at Fort Devins federal medical facility. During the course of the PREA investigation Plaintiff's attacker was transferred to MDC-Brooklyn federal facility, carelessly admitted into the general population in spite of the previous unresolved assault, and placed in a two-man cell with Plaintiff. On May 21, 2018, having become specifically aware of Plaintiff's attacker's previous unresolved assault, Federal Bureau of Prisons employees at MDC-Brooklyn

federal facility physically restrained Plaintiff's attacker and removed him from the unit pursuant to the PREA investigation which he was the subject of. The Bureau of Prisons employee working on the unit said that he was taken to the Special Housing Unit. 20-30 minutes later he was returned to the I-61 housing unit and placed in a two-man cell with Plaintiff irregardless of him being an involuntary commit for mental examination and the subject of a PREA investigation.

4. Out of curiosity Plaintiff asked the inmate what he was taken to the Special Housing Unit for and why they let him go so easily. He explained that the Lieutenant told him that he had serious charges for assault against him. He said he told the Lieutenant "You know what I'm here for." He said the Lieutenant then asked him for his side of the story. He said he told the Lieutenant "[the other inmate] spit on me so I beat his ass." Thus, the Lieutenant let him go.

5. On May 22, 2018 this same inmate whom was placed in a two-man cell with Plaintiff assaulted Plaintiff by throwing a bowl of scorching hot water on him burning his neck, left shoulder, left chest and mid to

upper back severely covering at least up to 20 plus percent of his body. Plaintiff was hospitalized for two weeks in the Intensive Care Burn Unit at Staten Island University Hospital. He has suffered physical disfigurement as well as mental, emotional, and psychological injuries for which he takes psychotropic medication to this very day.

6. In compliance with the provisions of the FTCA Plaintiff submitted an administrative tort claim dated 2/22/2019 (See copy attached) to the Federal Bureau of Prisons' Northeast Regional Office. Having located a Standard Form 95 Plaintiff submitted that administrative tort claim dated 3/14/2019 (See copy attached) to the Federal Bureau of Prisons' Northeast Regional Office. Plaintiff met his requirement to exhaust administrative remedies under the FTCA when his administrative claim was denied by letter dated September 6, 2019 (See copy attached).

WHEREFORE Plaintiff demands a sum certain of \$20,000,000.00 (Twenty million dollars) in damages for compensation of the aforementioned injuries. A jury trial is requested.

Dated: November 14, 2019

Respectfully Submitted,

By: Andre Calix  
 ANDRE CALIX, pro se  
 FBI - Danbury  
 33 1/2 Pembroke Road  
 Danbury, C.T. 06811

BP-A0943 Small Claims for Property Damage or Loss (31 U.S.C. § 3723)  
MAR 18

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

<p>1. Location where the property loss or damage occurred: <u>MDC-Brooklyn</u> <u>80 29th Street</u> <u>Brooklyn, NY 11232</u></p>	<p>2. Name, address of claimant (Register number, street, city, state, and zip code): <u>ANDRE CALIX 68956-054</u> <u>FCI-RAY Brook</u> <u>P.O. Box 900</u> <u>Ray Brook, New York 12977</u></p>
<p>3. Date and Day of Incident: <u>Tuesday May 22, 2018</u></p>	<p>4. Time: <u>(A.M.)</u> or P.M.): <u>Between 8-9 A.M.</u></p>
<p>5. Basis of Claim (State in detail the known facts and circumstances of the damage to, or loss, of privately owned property, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages, if necessary.):</p> <p><u>On the above stated day, date and time claimant was attacked/assaulted by having hot water thrown on him, by an inmate unknown to claimant, which resulted in claimant being hospitalized in the Intensive Care Burn Unit at Staten Island University Hospital for two weeks. The inmate who attacked claimant was a mental forensic patient in transfer from Fort Devins Hospital and had a pending and/or unresolved administrative assault on another inmate aside from claimant at the time that claimant was attacked. Staff at MDC-Brooklyn became aware of the pending and/or unresolved assault on May 21, 2018 at which time the inmate was removed from general population. Staff returned the inmate to general population shortly thereafter without formal disposition of the prior assault.</u></p>	
<p>6. Witnesses (Please provide the name and address (number, street, city, state, and zip code) of each witness):</p> <p><u>Lieutenant Thomas Pope</u> <u>MDC-Brooklyn</u> <u>Correctional Officer Whitman Chan</u> <u>80 29th Street</u> <u>Correctional Officer Andrew Livingston</u> <u>Brooklyn, NY 11232</u></p>	
<p>7. Amount of Claim for Damage to, or loss of, privately owned property (in dollars) (Sum Certain Amount - Total Amount Of Claim): <u>\$100,000,000.00</u></p>	
<p>8. MAIL OR DELIVER CLAIM TO THE REGIONAL OFFICE WHERE THE CLAIM OCCURRED</p>	
<p>I CERTIFY THAT THE AMOUNT OF THE CLAIM COVERS ONLY DAMAGE TO, OR LOSS OF PRIVATELY OWNED PROPERTY CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.</p>	
<p>9. Signature of Claimant or Authorized Representative  <u>ANDRE CALIX</u></p>	<p>10. Date <u>2/22/2019</u></p>

<b>CLAIM FOR DAMAGE, INJURY, OR DEATH</b>		<b>INSTRUCTIONS:</b> Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: <i>Federal Bureau of Prisons, Northeast Regional Office 2nd and Chestnut St, U.S. Custom House 7th fl, Philadelphia, PA 19106</i>		2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. <i>Andre Calix 68956-054 FCI - Ray Brook P.O. Box 900 Ray Brook, New York 12977</i>			
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN	4. DATE OF BIRTH <i>1-26-1982</i>	5. MARITAL STATUS <i>Single</i>	6. DATE AND DAY OF ACCIDENT <i>Tuesday May 22, 2018</i>	7. TIME (A.M. OR P.M.) <i>8-9 A.M.</i>	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). <div style="text-align: center; font-size: 1.5em; margin-top: 10px;"><i>SEE ATTACHMENT</i></div>					
<b>9. PROPERTY DAMAGE</b>					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code):					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
<b>10. PERSONAL INJURY/WRONGFUL DEATH</b>					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. <div style="text-align: center; font-size: 1.2em; margin-top: 10px;"><i>2nd and Deep 2nd degree burns to chest, shoulder, neck (back), upper to mid back. See attachment also.</i></div>					
<b>11. WITNESSES</b>					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
<i>Lieutenant Thomas Pope Correction officer Whitman Chan Correction officer Andrew Livingston</i>		<i>MDC-Brooklyn 80 29th Street Brooklyn, NY 11232</i>			
<b>12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)</b>					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY <i>\$100,000,000.00</i>	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights). <i>\$100,000,000.00</i>		
<b>I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.</b>					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). <div style="text-align: center; font-size: 1.2em; margin-top: 10px;"><i>ANDRE CALIX</i></div>		13b. PHONE NUMBER OF PERSON SIGNING FORM		14. DATE OF SIGNATURE <i>3/14/2019</i>	
<b>CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM</b> <small>The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).</small>		<b>CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS</b> <small>Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)</small>			



## INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

N/A

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No 17. If deductible, state amount.

N/A

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

N/A

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

N/A

## INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

## PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose:* The information requested is to be used in evaluating claims.

C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

## PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

Claimant: ANDRE CALIX; Standard Form 95 Attachment

Date: 3/14/2019

NOTICE: This Standard form 95 and attachment is being submitted to supplement the previous Small Claims for property damage or loss form dated 2/22/2019. The previous form was submitted as it was the only one provided by staff at this facility at the time and upon research by claimant and information provided to staff at this facility the correct form was able to be located.

BASIS OF CLAIM ATTACHMENT: On Tuesday May 22, 2018 around about 8-9 A.M. at MDC-BROOKLYN FBOP facility, 80 29th Street, Brooklyn, NY 11232, claimant, ANDRE CALIX 68956-054 was attacked/assaulted by having scorching hot water thrown on him, by an inmate unknown to claimant yet housed in a two-man cell with him, which resulted resulted in claimant being hospitalized in the Intensive Care Burn Unit at Staten Island University Hospital for two weeks due to 2nd and deep 2nd degree burns sustained to the left chest, shoulder, upper to mid-back covering up to at least 20 plus percent of claimant's upper body. The inmate who attacked claimant was a mental health forensic patient in transit from Fort Devins Hospital and had a pending and/or unresolved administrative assault on another inmate aside from claimant at the time that claimant was attacked. Staff at MDC-Brooklyn became aware of the pending and/or unresolved assault on May 21, 2018 at which time the inmate was removed from general population. Staff returned the inmate to the general population 20-30 minutes later to be housed with claimant without formal disposition of the prior assault.





Federal Bureau of Prisons

*Northeast Regional Office*

*Via Certified and Return Receipt Mail*

U.S. Custom House-7th Floor  
2nd & Chestnut Streets  
Philadelphia, PA 19106

September 6, 2019

Mr. Andre Calix, Reg. No. 68956-054  
MDC Brooklyn  
P.O. Box 329002  
Brooklyn, NY 11232

RE: Administrative Claim No. TRT-NER-2019-02802

Dear Mr. Calix:

Administrative Claim No. TRT-NER-2019-02802, properly received on March 7, 2019, has been considered for settlement as provided by the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2672, under authority delegated to me by 28 C.F.R. § 543.30. Damages are sought in the amount of \$100,000,000.00 based on a personal injury claim. Specifically, you allege on May 22, 2018, you were assaulted by other inmates at MDC Brooklyn due to the deliberate indifference of staff. You state you suffered burns to your upper body as a result of the assault.

An investigation shows on May 22, 2018, you were observed with burns to your body. The staff member was informed that your cellmate threw hot water on you. Staff escorted you to Health Services for evaluation. During the evaluation, you were observed with burns to your head, face, neck, trunk, and arm. You were given an injection of Ketorolac for pain, and due to the nature of your injuries, you were transported to an outside medical center for treatment. You were treated for second degree burns. On June 4, 2018, you returned to the institution. Health Services staff continued to provide you with follow-up medical care. Inmates are housed based upon the security needs. There is no indication staff were aware of any security concerns you had with the assailant prior to the incident in which you sustained burns. There is no evidence you experienced a compensable loss as a result of the negligence on the part of a Bureau of Prisons employee. Accordingly, your claim is denied.

If you are dissatisfied with this decision, you may bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Howard", is written over a horizontal line.

Darrin Howard  
Regional Counsel

cc: D. Edge, Warden, MDC Brooklyn

Clerk of the Court  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

November 14, 2019

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ NOV 19 2019 ★

BROOKLYN OFFICE

Dear Your Honor:

Enclosed please find Federal Tort Claim Act complaint, attachments, and motion/affidavit to proceed in forma pauperis by Andre Calix. I ask that you please send me back a certified stamped copy of the complaint and a copy of the docket sheet indicating the date, etc. the complaint was filed in the Court. Thank you for your time and attention.

Sincerely,

By: Andre Calix  
ANDRE CALIX  
FCI - Danbury  
33 1/2 Pembroke Rd  
Danbury, C.T. 06811